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July 20, 2001

Commonwealth of Kentucky
Public Service Commission
Frankfort, Kentucky

Re: Case No. 2001-104, Joint Application for Transfer of Louisville Gas and Electric Company and Kentucky Utilities Company in Accordance with E.ON AG's Planned Acquisition of PowerGen PLC.

Members of the Commission:

Enclosed please find an original and ten copies of Gallatin Steel Company's Brief, and accompany notice of service, in the above-referenced matter.

Respectfully submitted,

John H. Conway

John H. Conway

cc: Service List (with enclosure)

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF E.ON AG, POWERGEN PLC, LG&E ENERGY CORP., LOUISVILLE GAS AND ELECTRIC COMPANY, AND KENTUCKY UTILITIES COMPANY FOR APPROVAL OF AN ACQUISITION	)))))	CASE NO. 2001-104

BRIEF OF GALLATIN STEEL COMPANY

INTRODUCTION

By Joint Application filed May 14, 2001, E.ON AG, and PowerGen plc ("PowerGen"), two international power companies based, respectively, in Germany and in the United Kingdom, LG&E Energy Corp. ("LG&E Energy"), Louisville Gas and Electric Company ("LG&E"), and Kentucky Utilities ("KU") requested Commission approval to transfer the ownership and control of LG&E and KU to E.ON. Under Kentucky law, E.ON must demonstrate that it has the financial, technical, and managerial abilities to provide reasonable service to Kentucky consumers, and it must establish as well that the acquisition is for a proper purpose and is in all respects consistent with the public interest. The Commission has authority pursuant to KRS 278.020(4) and (5) to approve, with such conditions as may be required to protect the public interest, or disapprove the proposed transaction.

Gallatin Steel Company ("Gallatin Steel") intervened in this proceeding and submitted testimony explaining why the proposed acquisition of LG&E and KU – the second takeover of these utilities by a foreign corporation in less than 18 months – may not be in the public interest.

If the acquisition is approved, Gallatin Steel urges the Commission to impose specific conditions to protect the interests of Kentucky consumers.

ARGUMENT

Just last year, this Commission approved Powergen's application to execute its merger with LG&E and KU. *In the matter of Joint Application of Powergen PLC, LG&E Energy Corp., Louisville Gas & Electric Company, and Kentucky Utilities Company for Approval of a Merger,* Case No. 2000-095 (May 15, 2000). In doing so, the Commission expressed the concern that LG&E and KU continue their historic policies and level of effort in support of economic development in the Commonwealth and maintaining a strong presence as positive corporate citizens in the communities they serve. *Id.* at 29. That same concern exists in reviewing the E.ON application.

The Commission must expect that E.ON ultimately will act in accordance with the best interests of its shareholders. E.ON is an international energy company that expects its top management, including those running LG&E Energy, to meet financial targets and provide returns for E.ON's investment.[2] As a large, global enterprise, that financial interest often will not align with Kentucky's best interests, and could well be adverse to Kentucky's interests unless appropriate safeguards are established.

There already is evidence of recent moves by LG&E that demonstrate just this adversity of interests. Gallatin has witnessed first-hand a sudden, substantial and counterproductive change in LG&E Energy's approach toward providing service for Gallatin.

Gallatin owns and operates a steel production facility in Ghent, Kentucky that employs over 350 people. This "mini-mill" uses large amounts of electricity to melt and recycle 4,000

[2] Transcript of Hearings ("Tr.") Vol. I, pp. 77-79, 198-200; Vol.II, p. 278.

tons of scrap steel per day. Steel making is an energy intensive business, and Gallatin relied upon Kentucky's reliable and low cost electricity in building this business.[3]

Gallatin is an indirect customer of LG&E, purchasing electricity from East Kentucky Power Cooperative that includes up to 50 megawatts of demand and associated energy supplied to EKPC by LG&E on behalf of Gallatin. The Gallatin/EKPC "Special Agreement For Electric Services" ("Agreement") was approved by this Commission. *In the Matter of: East Kentucky Power Cooperative Inc's Filing of a Proposed Contract with Gallatin Steel Company, Case No. 94-456 (April 14, 1995).*[4] In that approval, the Commission explicitly recognized the close working relationship between LG&E, EKPC and Gallatin in providing the full amount of service required for the efficient operation of Gallatin's mill. *Id.* at 3 and n. 3.

As described by Gallatin's witness, recent actions by LG&E during its merger last year with Powergen, and more recently during the E.ON takeover, have raised serious concerns that the Commission should address. Gallatin has observed a change in LG&E's position as to how often it might interrupt service earmarked for Gallatin and in providing power for Gallatin without providing notice as to what the actual cost of that power might be until after the fact and Gallatin receives the invoice.[5] As a result of these new interpretations, Gallatin may be subjected to an unacceptable level of interruption or be required to take high-priced electricity. These are critical issues because, in effect, Gallatin obtains power from both LG&E and EKPC under terms that approximate current market prices and does so under contracts that, properly

[3] *See* Direct Testimony of Charles Ellison Greene, IV submitted on behalf of Gallatin Steel Company (hereafter "Greene Testimony")(received, Tr. Vol. II, p. 231); Tr. Vol. II, pp. 238, 241-242; *see also* Gallatin Exhibit 1 and Joint Applicants' Exhibit 3.

[4] A copy of this Agreement dated October 27, 1994 has been submitted in this proceeding as "Gallatin Exhibit No. 1".

[5] *See* Greene Testimony at 6-8.

effectuated, permit it to operate efficiently and to choose not to take power when that power is deemed by Gallatin to be too expensive.[6]

We submit that the proper inference to be drawn from Gallatin's testimony is that in the clash of corporate and consumer interests – with the local utility having to provide financial returns to its new, foreign owners – Kentucky consumers including Gallatin, and all consumers that are jurisdictional to this Commission, will come out second best unless the Commission properly conditions the merger. Interpreting its contract in new ways that inure to LG&E's financial benefit at Gallatin's expense cannot be allowed.[7] To that end, as a condition of the merger, LG&E should specifically be required to return to its pre-merger practices as to Gallatin and interrupt no more than once a day and not charge Gallatin higher than its coal-fired production costs without first calling Gallatin for an interruption and providing Gallatin notice and a real opportunity to "buy through" that interruption

Second, the Commission should act to discourage any future change in the course of dealings by LG&E that would work to the detriment of any of Kentucky's ratepayers, whether direct or indirect customers of LG&E. To that end, E.ON should not be permitted to export LG&E's low-cost resources outside of the State if doing so will increase charges to Kentucky consumers like Gallatin Steel. And neither E.ON nor its affiliates should be permitted to offer more attractive rates or terms of service to end users in other jurisdictions that it offers Kentucky consumers, either directly or indirectly. To the extent this behavioral shift in policy impacts

[6] *See* Greene Testimony at pp. 4-5 describing how Gallatin's furnace operator and EKPC's and LG&E's dispatchers interact regarding the purchase and interruption of power.

[7] To be sure, as the Commission noted during the course of the hearing, the contract under which LG&E supplies power for Gallatin is one between LG&E and EKPC and is thus non-jurisdictional. Tr. Vol. 1, pp. 280-282. That said, and as already described, the Commission has also recognized the extraordinary close interrelationship of the LG&E contract and the EKPC/Gallatin contract that is under its jurisdiction.

jurisdictional customers, the Commission should prohibit any further diminution in the level or character of service provided to jurisdictional customers.

Finally, because E.ON's proposed acquisition of LG&E poses risks to consumers, the Commission should require a commitment from E.ON to extend to Kentucky consumers comparable benefits and cost savings that it may agree to, or be required to offer, by any other regulatory body that must approve the acquisition so that Kentucky consumers come out no worse than anyone else.

CONCLUSION

If the Commonwealth is to truly protect consumers, it must assure that Kentucky will not be harmed by the acknowledged desire of E.ON to implement the first phase of its American acquisitions with the acquisition of KU and LG&E. Therefore, for the reasons stated herein, Gallatin urges the Commission to adopt the above recommendations with respect to the Joint Application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary for this proceeding, by first class mail, postage prepaid.

Dated the 20th day of July 2001.

John H. Conway

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